



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF M-A-C INC.

DATE: FEB. 13, 2019

APPEAL OF NEBRASKA SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, an acupuncture clinic, sought to employ the Beneficiary as an acupuncturist. It requested classification of the Beneficiary as a member of the professions holding an advanced degree under the second preference immigrant category. Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). This employment-based “EB-2” immigrant classification allows a U.S. employer to sponsor a professional with an advanced degree for lawful permanent resident status.

After initially approving the petition, the Director of the Nebraska Service Center revoked the approval.¹ The Director found that neither the labor certification nor the petition contained the employer/Petitioner’s original signature, as required by applicable regulations, and concluded that neither document was properly filed. The Director invalidated the labor certification on the ground that the employer’s signature was falsified, and revoked the approval of the petition on the same ground and because it was not accompanied by a valid labor certification. The Beneficiary filed a motion to reopen and reconsider, which the Director denied.

The matter is now before us on the Beneficiary’s appeal. Although normally not the case, under certain circumstances described below a beneficiary may be considered to be an affected party in immigrant petition revocation proceedings. In this case, because the Director did not determine the Beneficiary’s eligibility to participate in the revocation proceedings, we will withdraw the Director’s decision and remand this matter for further proceedings consistent with the following decision.

I. WHETHER THE BENEFICIARY IS AN AFFECTED PARTY

U.S. Citizenship and Immigration Services (USCIS) regulations do not generally allow a beneficiary to appeal a petition’s revocation. *See* 8 C.F.R. § 103.3(a)(1)(iii)(B) (stating that a beneficiary is not an “affected party” with legal standing in a proceeding). However, certain “portability-eligible” beneficiaries of revoked I-140 visa petitions are treated as affected parties in revocation proceedings.

¹ At any time before a beneficiary obtains lawful permanent residence U.S. Citizenship and Immigration Services may revoke a petition’s approval for “good and sufficient cause.” Section 205 of the Act, 8 U.S.C. § 1155. A petition’s erroneous approval may in and of itself justify its revocation. *Matter of Ho*, 19 I&N Dec. 582, 589 (BIA 1988).

Section 204(j) of the Act, 8 U.S.C. § 1154(j). *See Matter of V-S-G- Inc.*, Adopted Decision 2017-06 (AAO Nov. 11, 2017). Under the portability provision of section 204(j) of the Act, approved petitions may remain valid under certain conditions even after eligible beneficiaries change jobs or employers. A beneficiary of a valid visa petition, whose application for adjustment of status remains pending for at least 180 days, may “port” the petition to a new job if that job is in the same or similar occupational classification as the position offered in the petition. Thus, even though the petitioner for the visa classification and its beneficiary are no longer in an employment relationship, the underlying petition may remain valid for purposes of the beneficiary’s adjustment of status application.

In *Matter of V-S-G- Inc.* we held that “[b]eneficiaries of valid employment-based immigrant visa petitions who are eligible to change jobs or employers and who have properly requested to do so [under section 204(j)], are ‘affected parties’ under DHS regulations for purposes of revocation proceedings. . . .” *Matter of V-S-G- Inc.*, Adopted Decision 2017-06 at *1. In this case, the Beneficiary notified USCIS of a new job offer and intent to port more than a year before the date of the Director’s notice of intent to revoke (NOIR). At the time of the revocation, which postdated the decision in *Matter of V-S-G- Inc.*, the Director did not, contrary to USCIS guidance, address the Beneficiary’s prior request to change employer in order to determine whether the Beneficiary properly ported and could therefore be considered an affected party in the revocation proceedings. *See* USCIS Policy Memorandum PM-602-0152, *Guidance on Notice to, and Standing for, AC21 Beneficiaries about I-140 Approvals Being Revoked After Matter of V-S-G- Inc.* (Nov. 11, 2017), <http://www.uscis.gov/laws/policy-memoranda>. While it appears from the record that the Beneficiary requested to port in a timely manner, it is not clear that the request was favorably adjudicated by the Director so that the Beneficiary could be considered an “affected Party” as in *Matter of V-S-G-*.²

We will therefore withdraw the Director’s decision and remand this matter. On remand, the Director should determine whether the Beneficiary properly ported under section 204(j) of the Act. This determination involves considering whether the Beneficiary’s adjustment of status application had been pending for at least 180 days at the time of the request to port. *See* 8 C.F.R. § 245.25(a)(2). It also involves considering whether USCIS received sufficient notice of the Beneficiary’s new job and whether the job is in “the same or similar occupational classification” as the position offered in the petition. *Id.*; *see also* USCIS Policy Memorandum PM-602-0152, *supra*.

If the Beneficiary is found on remand to have properly ported, the Director will issue a new NOIR to the Petitioner and the Beneficiary. If the Beneficiary did not properly port, the Director should issue a new NOIR to the Petitioner only. Upon receipt of a timely response, or of timely responses, to a new NOIR the Director should review the entire record and enter a new decision.

² We note that the Director’s decision on the motion to reopen and reconsider was addressed to the Beneficiary, but stated in the body of the decision, incorrectly, that it had been filed by the Petitioner.

II. CONCLUSION

In accordance with the above analysis, we remand this matter to the Director to determine the Beneficiary's eligibility to participate in revocation proceedings as an affected party.

ORDER: The decision of the Director is withdrawn. The matter is remanded for further proceedings consistent with the foregoing analysis and for the entry of a new decision. If the Beneficiary is deemed to be an affected party, and the new decision is adverse, the new decision shall be certified to us for review.

Cite as *Matter of M-A-C- Inc.*, ID# 2032008 (AAO Feb. 13, 2019)